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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WASHINGTON & O. D. RY. *v.* WARD'S ADM'R.

June 8, 1916.

[89 S. E. 140.]

1. Trial (§ 41 (5)*)—Trial—Exclusion of Witnesses—Competency of Witness Remaining.—A witness who had not been summoned and did not know he was to be called, but who was present when the court ordered that witnesses be excluded from the courtroom during the trial, plaintiff's counsel not having talked to him about the case, and not knowing that he was in court until just before he was called to the stand, third in order of 30 witnesses, was not rendered incompetent by being in court.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 105; Dec. Dig. § 41 (5).* 13 Va.-W. Va. Enc. Dig. 955.]

2. Evidence (§ 539½ (2)*)—Expert Testimony—Qualification.—A witness who had been engaged off and on for 15 years in the operation of electric cars, had worked for defendant 13 months as motorman, had frequently operated car No. 4, and was familiar with the track and other conditions at the place of the accident, was properly allowed to testify as to the distance within which he could stop that car; there being evidence tending to show that it was the one which did the killing.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2351; Dec. Dig. § 539½ (2).* 5 Va.-W. Va. Enc. Dig. 785.]

3. Appeal and Error (§ 690 (5)*)—Reservation of Grounds of Review—Bill of Exceptions to Evidence.—Defendant's bill of exceptions, taken to save point of error in admission of testimony, showing absolutely nothing of the evidence except the question and answer, was fatally defective.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 2902; Dec. Dig. § 690 (5).* 5 Va.-W. Va. Enc. Dig. 375.]

4. Appeal and Error (§ 1053 (1)*)—Harmless Error—Improper Conduct of Counsel.—In an action against a street railway for a death, the improper action of plaintiff's counsel in showing a witness' adverse comment on the coroner's verdict for the avowed purpose of showing a bias on the part of the witness was not reversible error, where the court subsequently stated that it would rule out every-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

thing that had occurred in connection with such part of the examination.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4178, 4184; Dec. Dig. § 1053 (1); Trial, Cent. Dig. § 977.* 1 Va.-W. Va. Enc. Dig. 582.]

5. Railroads (§ 401 (5)*)—Injury on Track—Instructions—Misleading Character.—In an action against an electric railway for a death on its bridge, where the evidence tended to show that the bridge on which decedent child was walking was in common and well-known use by pedestrians, and especially by children, and, further, that the motorman was not keeping a reasonable lookout ahead, a requested instruction that it was not the duty of a railroad to have a lookout on its front car or to make any previous preparation for the discovery of licensees or trespassers on its bridge was properly refused as misleading.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1387; Dec. Dig. § 401 (5).* 7 Va.-W. Va. Enc. Dig. 727.]

6. Railroads (§ 359 (1)*)—Injuries on Track—Duties to Licensees.—Railroad companies owe no duty of prevision to licensees, but must, with the facilities at hand, and under the circumstances as they exist, exercise reasonable care to discover and avoid injuring them.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1238; Dec. Dig. § 359 (1).* 11 Va.-W. Va. Enc. Dig. 573.]

7. Trial (§ 248*)—Instruction—Abstractness.—In an action against an electric railway for a death on its bridge, where the entire testimony of both plaintiff and defendant was that the motorman did not see decedent at all, and the railroad claimed that even the car which struck him had never been identified, an instruction that, if the jurymen believed that the motorman on the car which killed decedent actually saw him on the bridge, but though he was in a safe position, and that the car would not strike him, the motorman was under no obligation to stop, was properly refused as abstract.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 582, 583; Dec. Dig. § 248.* 7 Va.-W. Va. Enc. Dig. 727.]

8. Railroads (§ 401 (1)*)—Instruction—Presentation of Both Theories.—In an action against an electric railroad for a death on its bridge, where defendant's theory was that decedent was a trespasser, while plaintiff's was that he was a licensee, and the evidence was conflicting on the point, an instruction that railroads owe no duty to children, trespassers on their roads or bridges, except a negative duty not to injure them after discovering their presence, unless the bridge where the accident occurred has been constantly used by the public, including children, for some months, the fact being known to the railroad, was proper as presenting both theories of the case.

*For other cases see same topic and KEY-NUBBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1382, 1383, 1385; Dec. Dig. § 401 (1).* 7 Va.-W. Va. Enc. Dig. 715. For an interesting and instructive criticism of the decision on the point contained in this headnote see the letter of Hon. M. R. Peterson, published under the title "Correspondence" in this issue.]

9. Railroads (§ 398 (1)*)—Injuries on Track—Sufficiency of Evidence.—In an action against an electric railroad for a death on its bridge, evidence held sufficient to support a verdict for the plaintiff.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1356, 1363; Dec. Dig. § 398 (1).* 11 Va.-W. Va. Enc. Dig. 597.]

10. Negligence (§ 96*)—Injuries on Track—Contributory Negligence of Parents.—Where the parents of a boy about six years old, resident in a city, allowed him to play on the streets near his home and within certain well-defined limits, and on the afternoon when the boy was killed on the bridge of an electric railway crossing the Potomac river the father had left him on the street three doors from their home shortly before the accident, telling him to stay at home that afternoon, they were not guilty of contributory negligence.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 157-161; Dec. Dig. § 96.* 7 Va.-W. Va. Enc. Dig. 340.]

Error to Circuit Court, Alexandria County.

Action by John M. Ward's administrator against the Washington & Old Dominion Railway. Judgment for plaintiff, and defendant brings error. Judgment affirmed.

C. E. Nicol, of Alexandria, and *W. J. Lambert* and *Geo. B. Fraser*, both of Washington, D. C., for plaintiff in error.

Crandal Mackey, of Washington, D. C., for defendant in error.

CITY OF HAMPTON *v.* WATSON.

June 8, 1916.

[89 S. E. 81.]

Fish (§ 7 (3)*)—Pollution of Navigable Waters—Lessees of Oyster Grounds.—While the bed and waters below low-water mark of a tidal navigable arm of the sea within the state belong to the state, subject to right of navigation, they are held by it in a sovereign capacity in trust for the public, and cannot be granted to an individual so as to impair the public interests therein or use thereof, one of which is the right of a city to empty its sewage into such waters; and therefore a lessee from the state of lands thereunder for oyster beds has no claim against the city for injury thereto from such pollution of the water.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.